

10 May 1974

MEMORANDUM FOR:

OLC

STATINTL

SUBJECT : S. 3393 - "Government Secrecy Control Act of 1974"

1. The major features of the bill are as follows:

(a) It would establish policy concerning secrecy of "information relating to the national defense or foreign policy of the United States." Such information could be kept secret "only when the disclosure of such information would harm the national defense or foreign policy or when such information has been provided to the Government of the United States by a foreign government or international organization pursuant to an agreement which conforms to the policy of this section and which precludes the release of such information without the consent of that foreign government or international organization." Further, such information may not be kept secret "in order to impede access by Congress to such information or to conceal incompetence", etc.

(b) The bill would establish a Joint Committee on Government Secrecy, with authority to:

(1) monitor and direct the departments in implementing the act;

(2) bring suit to enforce the act, and

(3) recommend Congressional procedures to protect classified information in the custody of Congress.

(c) It would establish in the Executive Office of the President an Office of National Defense and Foreign Policy Information to be headed by a Registrar of National Defense and Foreign Policy Information.

(d) The bill assumes, but does not require, the issuance of an Executive order. It intends that Exemption 1 under the Freedom of Information Act will continue to be operative, that is, documents classified under an Executive order based on the policy established by the bill may be withheld from the public or a requester. The bill also abolishes the Interagency Classification Review Committee.

2. A document originated after the effective date of the Act (180 days after enactment) may be kept secret and withheld under Exemption 1 only if it is appropriately entered in the Register. Entry in the Register requires "a concise and complete description of the subject matter, including the title if any, of the document," the name of the agency, the name and title of the official who classified the document, the name of each agency to which each document was disseminated, the date of origin, the date of classification, and the projected date of declassification. But there are provisions to permit "aggregate entries" with respect to documents which are voluminous in quantity or similar in content. Also, the name and title of the classifier is not required if his activity "requires anonymity in the interest of his personal safety." In such cases the classifier must be identified by code. Further, documents which are destined for disposal within 60 days do not require registration.

3. The Registrar is to transmit a Duplicate Register to the Joint Committee each month.

4. The Registrar has other far-reaching powers.

(a) He is to review entries on the Register to determine whether they comply with the Act and he is "to adjust those entries which are not in compliance."

(b) He is to review existing orders and regulations and their administration and recommend to the President "procedures authorizing Federal departments and agencies and the officials thereof" to classify and declassify documents.

(c) He is to report annually to the President and the Congress on the administration of regulations and orders under the Act,

including the numbers and titles of officials authorized to classify and declassify, the numbers of documents classified and declassified during the previous year by each department, the numbers of documents which are to remain classified at least three years which were so designated within the previous year, and the number and result of investigations for each year in each department concerning breaches of regulations.

(d) He is to review with the appropriate officials of the department involved any proposed final action which would deny access to a document to any person because the document is classified "and to approve or disapprove such action."

(e) He is to review and promulgate regulations to standardize such other practices within the Executive Branch relating to secrecy of information, including security clearance procedures, routing designations for information, and security measures for automatic data processing systems of secret information, as he may deem necessary and appropriate under the Act.

5. The Joint Committee is to have various housekeeping and other powers, including the subpoena power. Its substantive powers include:

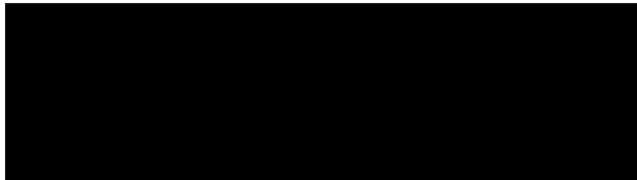
(a) The Committee is to review the practices of the departments and if it determines that practices fail to conform to the policy of the Act, it is "to direct their revision."

(b) The Committee may direct agencies originating or having custody of a document to furnish the document to the Committee for inspection to determine the propriety of the classification.

(c) Having determined that classification is inappropriate, the Committee shall "direct the public disclosure, in whole or in part, of such document."

6. Under the bill documents which are ten years old on the effective date of the Act may not be withheld because they are classified unless an appropriate entry is made on the Register. Four years after the effective date of the Act, documents which at that time are less than 14 years old may not be withheld as classified unless they are first entered on the Register.

7. The bill obviously would greatly reduce the power and ability of the Director, or of any agency head, to protect information. Power is lodged in the Registrar, who is an Executive Branch official, and in the Joint Committee, by which either of those two could override decisions of department heads and direct certain actions. This, together with the requirement that all classified documents be listed on the Register, is so far reaching that I think the bill will seriously threaten the capacity of the Agency to function. Additionally, the authorities reserved to the Joint Committee raise a serious question as to the constitutionality of the Act; that is, whether there is a violation of the separation of powers concept. I suggest we make both of these points in our answer.

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INTL

Associate General Counsel